IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2207 of 2000
AND
FIRST APPEAL No 2206 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOSHEGI SEEDS CORPORATION

Versus

DENA BANK

Appearance:
F.A.NOS.2206 & 2207 OF 2000.
MR HM PARIKH for Appellants
MR RD DAVE for Respondent.

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE D.A.MEHTA

Date of decision: 20/01/2001

CAV COMMON JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

FIRST APPEAL NO.2207 OF 2000.

1. First Appeal No. 2207 of 2000 arises out of Special Civil Suit No.52 of 1991 which was decided by the Civil Judge (S.D), Nadiad on 16.08.2000.

2. In the said Special Civil Suit, Dena Bank, Mehmadabad Branch (hereinafter referred to as 'the Bank') who was a plaintiff filed the said suit for recovery of Rs.5,68,372.45 ps. from the respondents (who are the appellants in these appeals). The Bank advanced a loan of Rs.7,50,000/- on 31.8.1982 under Cash Credit Pledge Account to original respondent nos. 1 to 4 while original respondent nos. 5 and 6 were the guarantors to the Bank in relation to the aforesaid loan. As per the term of the contract the rate of interest was 16.5%. On the date of the suit, according to Bank, the original respondents were obliged to pay Rs.5,68,372.45 to the Bank.

3. In defence original respondents raised a counter claim of Rs.4,72,248/- which according to them was wrongly recovered by the Bank charging interest at the rate of Rs.16.5% instead of 14% which was the rate at which the interest was to be charged in relation to agricultural produces/activities.

4. The Trial Court framed the following issues and answered respectively against each of them :

(1) Does the plaintiff prove that its Mehmadabad Branch advanced C.C.Pledge loan of Rs.7,50,000/- on 31.8.1982 which was liable to be charged interest at 16.5% ? And whether the defendants had executed necessary documents for the same ?	Affirmative.
(2) Does the plaintiff prove that defendants no.5 & 6 had become the guarantors and executed necessary documents for the same on 31.8.1982 ?	Affirmative.
(3) Does the plaintiff prove that a loan of Rs.5,68,372.45 remained outstanding against defendants ? And the defendants are jointly and severally liable to repay the same ?	Affirmative.
(4) Do the defendants prove that plaintiffs bank has concocted	Negative.

false documents and that they are not liable for the same ?

(5) Is the suit of the plaintiff beyond the period of limitation - if not what is the consequence ? — Negative.

(6) Does the plaintiff prove that a loan of Rs. 5,68,372.45 remained outstanding against defendants ? And the defendants are jontly and severally liable to repay the same ? — Affirmative.

(7) Do the defendants no. 3,4 5 and 6 prove that due to negligence of the plaintiff Bank, the goods which were in its custody were not taken care of ? That the said goods deteriorated in quality resulting in loss of Rs. 4,72,248/- to the defendants? — Negative.

(8) Are the defendants entitled to recover the loss mentioned in issue no.7 from the plaintiff bank ? If yes, then what amount are the defendants entitled to ? — Negative.

(9) Is the plaintiff Bank entitled to reliefs claimed ? If yes what relief from the reliefs claimed ? — Affirmative.

(10) What order ? — As per final order.

5. Shri H.M.Parikh, learned Counsel for the appellants herein (original defendants) has raised the follwoing points in support of the appeal.

(a) That the suit was barred by limitation and the Trial Court had erroneously held the same to be within period of limitation;

(b) That the Bank was under the terms of the contract having rights as well as corresponding obligations and that it had not discharged its obligation nor acted as a prudent commercial organisation which resulted in deterioration of goods which were pledged resulting in loss to the appellants;

(c) That as per condition no.11 of the pledge contract the Bank was required to sell all the goods before they deteriorated and bank had failed to do so; and

(d) That the Bank had charged interest at an excess rate and thus the Bank was not entitled to recover any amount.

6. Shri R.D.Dave, learned Counsel for the respondent Bank in support of the decision of the Trial Court contended that since 1985 there were disputes between the partners inter se, which ultimately resulted in retirement of one of the partners, and as a consequence inspite of repeated letters from the Bank, the appellants (original defendants) did not care to lift the goods in time nor did they choose to pay up the loan in question and clear the outstanding dues. It was further contended that the appellant firm and its partners were trading in seeds and such activity could in no way be treated as agricultural activity which would entitle them to be charged lower rate of interest and as such the Bank had made rightful claim at the current rate of interest.

7. The Trial Court has first of all taken into consideration the deposition of Kirtikumar Purshottamdas Mehta who was the Manager of Mehmadabad Branch of the Bank from 1981 to 1996. He has stated that he had forwarded proposal for loan to the regional office and on receiving the sanction from his superiors got the necessary documents executed from the original defendants as well as the guarantors. In support of this deposition he has produced and identified various documents, letter of guarantees, letter of goods, letter of continuity, demand promissory notes etc. under various exhibits and similarly he has also produced various documents showing renewal of original documents from time to time.

8. On behalf of the plaintiff Bank one Maheshkumar Natvarlal Trivedi was also examined under exhibit 209 wherein he has made the following two categorical statements : Firstly, that after 24.12.1985 the

defendants have not removed any stock of seeds which was lying in pledge in the Bank godown; secondly, that during his tenure the Bank had not charged interest at the rate of 14% to any of its customers as the said rate was not prevalent when he was posted in Mehmadabad Branch. He has also identified and exhibited documents in relation to properties (which were offered as securities) of the defendants under exhibits 210 to 218.

9. The Bank has further examined one Anantrao Gopalji Oza, another employee of the Bank, who has stated on oath that various documents exhibited at exhibits 227 to 230 were signed by the defendants in his presence and further that the entries made in the godown register were made by him and the goods were placed in pledge in his presence. He has further affirmed that the Bank has charged interest at the rate agreed to in the pledge contract and that the Bank had never tried to sell off the goods and that there was no negligence of the Bank resulting in deterioration of goods.

10. On behalf of the original defendants one Bipinchandra Jagmohandas Parikh who was partner of defendant no.5 was examined. He has stated that he was managing the affairs of partnership firm M/s. Moshegi Seeds Corporation viz. appellant no.1 (original defendant no.1). That the said firm was carrying on business of manufacture and sale of registered seeds and that the firm had taken loan in April 1982 and for this the goods, being seeds, were pledged. He has further affirmed that the goods were in custody of the Bank and that the godown was also under lock and key of the Bank. That the Bank used to insure the goods and the insurance premium was being debited to the account of the defendants, and as and when they would ask the Bank they were permitted to get the goods fumigated and tested. It was further stated by him that whatever quantity/value of goods would be put in pledge, on payment of 50% amount of the same the Bank would permit them to lift the goods of equivalent amount. Though in his examination in chief he has stated that he has not executed any documents with the Bank and that even if the original documents had been executed, the defendants had not got them renewed in the cross-examination he admits that he has no proof in support of his statement that the Bank had obtained signatures on Blank papers/documents. He further admits in cross-examination that he had not issued any notice to the Bank to the effect that the Bank had obtained signatures on blank papers/documents. It is further admitted in cross examination that though the Bank had asked him to carry out the germination test he had not

got such test carried out.

11. After taking into consideration the various evidences which have come on record, the Trial Court has come to the conclusion that (i) the defendants have executed the necessary documents which have been exhibited on record and from the said documents it is apparent that the defendants were bound to pay interest at the rate of 16.5% and this has also been admitted by them in their depositions, (ii) that though the defendants have claimed that they ought to have been charged interest at the rate of 14% as applicable to agricultural activities it is admitted by them that they have never made an application for being charged interest at rate applicable to loans relatable to agricultural activities; to the contrary they have obtained loan for commercial purpose, viz. trading and they have been accordingly charged interest at the rate of 16.5% which is as per guidelines issued by the Reserve Bank of India. The Trial Court has further held that when the rate of interest is fixed by the terms of the contract which has been entered into by the two parties to the contract, the Court is not entitled to make any variation in the same and for this purpose reliance has been placed on decision of this Court in 1985(2) GLR 919 and thus the defendants are bound to pay interest at the rate specified in the contract to the plaintiff Bank. It is on the aforesaid basis that the Trial Court has held that the Bank is entitled to sum of Rs.5,68,372.45 ps. from the defendants.

12. The Trial Court has further found that the averments made on behalf of the defendants that the Bank has falsified the documents has not been proved by any documentary evidence in support of such averments and that the defendants have not even intimated much less given any notice to the Bank about their signatures having been obtained on blank documents and as such the Trial Court has not believed the say of the defendants.

13. In relation to the plea of suit being barred by limitation, on examination of various documents on record, the Trial Court has found that the original contract was entered into on 31.8.1982 and thereafter the said contract has been renewed from time to time on 10.6.1983, 26.5.1984, 27.6.1985 and 25.6.1988, while the suit has been filed on 7.3.1991 and hence it has been held to be within the period of limitation.

14. Dealing with the plea of the defendants that the goods had deteriorated resulting in loss to the

defendants as a consequence of negligence on the part of the Bank, the Trial Court has found that as per condition no.4 of the pledge contract the Bank was not responsible for maintenance of the goods pledged but the defendants were liable for the same. That the goods which were pledged were seeds and that the Bank employees were not the persons who were technically qualified to know about the maintenance or upkeep of such goods and that they had specifically informed the defendants to carry out necessary chemical test/treatment which the defendant admitted in the deposition as having not carried out. In so far as the insurance of the goods is concerned, the defendant's witness has categorically admitted that the insurance premium was being paid by the Bank on their behalf and debited to their account. The Trial Court has further found from the correspondence on record that after 24.5.1985 the goods which had been pledged had never been lifted by the defendants nor had they taken any care to maintain quality of the goods. It is in light of appreciation of this evidence that the Court has held that the counter claim made by the defendants was not liable to be entertained.

15. We have taken into consideration the findings of the Trial Court in light of the submissions made by both the sides before us and we have carefully gone through the evidence available on record. The contract for pledge of goods is available at page 21 and the relevant terms which are material for our purposes are reproduced herein for ready reference :

"4th:- The Borrowers for shall at all times during the continuance of this security and so long as any money shall remain due and owing to the Bank by virtue hereof insure and keep insured in the name of the Bank the said goods already and hereafter delivered as aforesaid to the full extent of their value against fire risks and risks of riot and civil commotion and other risks as required by the Bank in the Devkaran Nanjee Insurance Co. Ltd. or any other company approved by the Bank and shall duly and punctually pay the premia payable in respect thereof at least one week before the same shall have become due or payable and shall deliver the policy or policies of insurance and receipts for premia paid in respect thereof to the Bank,l and the Borrowers agree not to raise at any time any dispute as to the amount of insurable interest of the Bank. If default shall be made in effecting

or renewing any policy or in payment of such premia or in keeping the said goods so insured it shall be lawful (but not obligatory) for the Bank without prejudice to its other rights to insure or renew or pay such premia and to keep the said goods insured and the expenses incurred by the Bank for the purpose shall be charged to and payable by the Borrowers on demand with interest as provided in Clause 7 hereof and until repayment shall be a charge on all goods from time to time pledged with the Bank.

11th :- That if the Borrowers shall fail to maintained such margin as aforesaid or if the Borrowers shall on demand fail to neglect to repay the balance then due to the Bank or if the Borrowers shall commit a breach of any of the loans herein contained or if the Borrowers or any of them shall commit any act of insolvency within the meaning of the Insolvency Acts or shall become or shall be adjudicated bankrupt or insolvent or shall execute any Deed of Arrangement or Composition or Inspectorship or if any distress or execution shall be levied or enforced upon or againt any of the property of the Borrowers or any of them whether the said property shall or shall not be the subject of this security or if any person, firm or Company shall take any step towards applying for or obtaining an order for the appointment of a Receiver of the 'Borrowers` property or any part thereof or (in the event of the Borrowers being a Joint Stock Company) if any person, firm or company shall apply for and obtain an order for the winding up of the Borrowers or if any such order is made or any step is taking to wind up the Borrowers or if any resolution be passed to wind up the Borrowers it shall be lawful for the Bank (without prejudice and in addition to Bank's right of suit against the Borrowers) forthwith or at any time or times thereafter and after notice in writing to the Borrowers demanding the balance then due to the Bank and default being made in payment for 72 hours after the posting of such notice either by public auction or private contract and subject to such condition as the Bank shall think it absolutely to sell or otherwise dispose of all or any of said goods either together or in lots or separately and to

apply the net proceeds of such sale in or towards the liquidation of the balance than due to the Bank and the Borrowers hereby agree that they consider such notice served in the manner provided in clause 18 hereof to be a reasonable notice.

XXX XXX XXX XXX

17th :- That the Bank shall not be in any way liable or responsible for any damage or depreciation which the goods for the time being pledged to the Bank and forming part of the security the subject of this Agreement or any part thereof may suffer or sustain on any account whatsoever while the same are in possession of the Bank during the continuance of this Agreement of thereafter and all such damage or depreciation shall be wholly on account of the Borrowers, howsoever the same may have been caused nor shall the Bank be responsible for any shortage resulting from theft or pilferage or otherwise however notwithstanding that the goods may be in the possession of or under the control of the Bank."

16. The Trial Court has already dealt with the condition no.4 under which maintenance of the goods in proper condition is the responsibility and obligation of the borrower viz.appellants (original defendants herein). In so far as condition no.11 is concerned, on which reliance was placed by the learned Counsel for the appellants to contend that the Bank was negligent, suffice it to state that the said condition cannot be read in the manner in which the learned Counsel wants us to read. In fact, as per the said condition the Bank is given discretionary power to sell off the goods after giving notice as stated therein, but such option which is available to the Bank cannot be read to mean that it shall operate as obligation on the Bank to take care of the goods and sell off the same in case the goods start deteriorating.

17. Condition no.17 is, in our view relevant and material for the purpose of arriving at a decision. It is specifically stated in the said condition that the Bank is not in any way liable or responsible for any damage or depreciation of the goods which are pledged with the Bank for the time being; even though they are in possession of the Bank during continuance of the agreement all such damage or depreciation shall be wholly on account of the borrowers howsoever the same may have

been caused. Therefore, once the defendants had entered into the contract with the Bank and this condition viz. condition no.17 was part of the said contract, it was not open to the appellant/defendants to raise plea about negligence of the Bank as the entire responsibility was of the borrowers i.e. the defendants. Though this condition has not been referred to either by Trial Court or any of the parties before us, as the same is materially relevant and important we have dealt with the said condition only with a view to ascertain as to whether the findings and the ultimate conclusion of the Trial Court are justified or not. Once this condition applies, then there can be no dispute as the contract has already been entered into by both the parties and the execution thereof having been admitted, the appellants/defendant cannot be heard to say that there was any negligence on the part of the Bank as consequence whereof the appellants would be entitled to damages.

18. We may also refer to the deposition of the Manager of the Bank which is available under exhibit 150. In the cross-examination he has very specifically stated that there was no responsibility of the bank or its officers for maintenance and upkeep of the goods pledged as it was a technical subject and moreover as per term of the contract also the Bank was not liable. That though the Bank had its own Godown Keeper, yet the Godown Keeper would open the godown as and when the defendants would ask the Bank to open the godown for the purposes of fumigation. He has further categorically stated that at the given point of time as the account of the defendants was being operated properly there was no question of selling the goods as claimed by the defendants.

19. Shri Maheshkumar N.Trivedi, another employee of the Bank has been examined under exhibit 209 and in his deposition he has stated that when a loan is given against seeds it is treated as a seasonal loan and such loan has to be cleared off, that the account has to be squared off by making full payment as and when season is over. That as and when new season commences fresh seeds have to be brought and it is the responsibility and obligation of the borrower to lift the goods by the end of the season. In case of failure to do so, the borrower has to produce certificate of germination power.

20. Therefore, even on appreciation of various depositions, it is clear that the defendants had failed in carrying out their part of obligation as they did not take proper care for maintenance of the goods in question and that though the season was over they did not lift the

goods within the specified period nor did they produce the germination test certificate even when they were called upon to do so.

21 Shri H.M.Parikh, learned Counsel for the appellants has placed strong reliance on Supreme Court decision in case of Vimal Chandra Grover Vs. Bank of India, reported in (2000) 5 SCC 122. We have carefully gone through the said decision and we find that the said decision cannot come to the aid of the appellants for the simple reason that in the case before the Supreme Court the borrowers had specifically requested the Bank to sell off part of the pledged shares to which the Bank had admittedly agreed and yet had not sold the said shares immediately but the Bank sold the shares after a period of nine months, by which time the price of the shares had fallen resulting in huge loss to the borrowers in the said case. It was in these circumstances that the Apex Court held that there was deficiency of service on account of negligent conduct of the Bank. This decision has been rendered by the Apex Court taking into consideration various provisions of Consumer Protection Act,1986. In the present case it is nowhere shown to us that the appellant/defendants at any point of time asked the Bank to sell off the goods and further, that the Bank had agreed to such a request; to the contrary on perusing the record it is revealed that it was the Bank which had kept on writing letters to the defendants to lift the goods in question and in such circumstances the appellant/defendants cannot be heard to say that there was negligent conduct on the part of the Bank.

22. On overall appreciation of the facts and evidence on record we find no infirmity with the findings and conclusion of the Trial Court and there is no warrant to interfere with the judgment and order dated 16.8.2000 passed by the learned Civil Judge (J.D), Nadiad. This appeal is accordingly dismissed with no order as to costs. Records and Proceedings be returned.

FIRST APPEAL NO. 2206 OF 2000.

23. We have heard both these appeals together at the request of both the parties. The facts and circumstances pertaining in both these cases are admittedly stated to be identical in nature, only difference being that there are two different partnership firms in each of the appeal under consideration. Therefore, for the same reasons as stated in First Appeal No.2207 of 2000 this appeal also stands dismissed.

Sd/- Sd/-

(M.R.Calla, J) (D.A.Mehta,J)

m.m.bhatt